

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2
3 WILLIAM A. MUNDELL
4 Chairman
5 JIM IRVIN
6 Commissioner
7 MARC SPITZER
8 Commissioner

9 In the matter of)

DOCKET NO. S-03441A-01-0000

10 WILLIAM E. BERGH, individually and d/b/a)
11 NATIONAL FINANCIAL GROUP)
12 9501 W. Camino De Oro)
13 Peoria, AZ 85382)

**NOTICE OF OPPORTUNITY FOR
HEARING REGARDING PROPOSED
ORDER TO CEASE AND DESIST,
FOR RESTITUTION, FOR
ADMINISTRATIVE PENALTIES,
AND FOR OTHER AFFIRMATIVE
ACTION**

14 WORLD WIDE BUSINESS OPPORTUNITIES,)
15 LLC)
16 11024 N. 28th Drive, Suite 200)
17 Phoenix, AZ 85029,)

18 Respondents.)
19

20 **NOTICE: RESPONDENTS HAVE 10 DAYS TO REQUEST A HEARING**

21 The Securities Division (“Division”) of the Arizona Corporation Commission (“Commission”) alleges
22 that respondents have engaged in acts, practices and transactions that constitute violations of the Securities Act
23 of Arizona, A.R.S. § 44-1801 *et seq.* (“Securities Act”).

24 **I.**

25 **JURISDICTION**

26 1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona
Constitution and the Securities Act.

II.

RESPONDENT

2 2. WILLIAM E. BERGH (“BERGH”), doing business as NATIONAL FINANCIAL GROUP
3 (“NFG”), is an individual, whose last known address is 9501 W. Camino De Oro, Peoria, Arizona, 85382.

1 BERGH is, and was at all times pertinent hereto, owner and President of WORLD WIDE BUSINESS
2 OPPORTUNITIES, LLC.

3 3. WORLD WIDE BUSINESS OPPORTUNITIES, LLC (“WWB”) is, or was at all pertinent
4 times, located at 11024 N. 28th Drive, Suite 200, Phoenix, Arizona, 85029.

5 4. On April 14, 2000, the Commission entered a Final Order for Relief and Consent to Same in
6 Decision No. 62465 (“Order”), finding that BERGH, NFG, and WWB had sold unregistered securities,
7 including “business opportunities,” in violation of Arizona’s Securities Act, revoking BERGH’s securities
8 salesman registration, and ordering BERGH, NFG and WWB to pay penalties.

9 5. BERGH, NFG, and WWB may be collectively referred to as “BERGH.”

10 III.

11 FACTS

12 A. BERGH Sold Unregistered Securities After the Commission Ordered 13 BERGH to Cease and Desist.

14 6. From in or around January 1999, BERGH, acting as a sales representative for World Cash
15 Providers, LLC, operating out of California, offered or sold, within and from Arizona, World Cash “business
16 opportunities” involving cash ticket machines (“CTMs”) together with service contracts with World Cash
17 Providers, Inc.

18 7. In February 2000, the State of California Department of Corporations (“DOC”) found that
19 the business opportunities sold by World Cash Providers, LLC and World Cash Providers, Inc. (collectively
20 “World Cash”) were securities and ordered World Cash to stop selling them in California.

21 8. On March 24, 2000, after the Securities Division informed BERGH of the alleged violations,
22 BERGH signed a proposed Final Order for Relief and Consent to Same (“Order and Consent”), individually
23 and dba NFG, and as President of WWB, agreeing to cease and desist from the sale of unregistered
24 securities including the World Cash CTM business opportunities, and to the permanent revocation of
25 BERGH’s securities salesman registration.
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1 9. On April 14, 2000, the Commission entered the proposed Order, finding, *inter alia*, that the
2 CTM business opportunities were unregistered securities and that BERGH had sold them in violation of the
3 Securities Act, and revoking BERGH's securities salesman registration.

4 10. Beginning in or around January 2000, unknown to the Division or the Commission, BERGH,
5 acting as a sales representative for Mobile Cash Systems, LLC ("Mobile Cash") based in Las Vegas,
6 Nevada, had started selling another business opportunity program. Like the World Cash CTM business
7 opportunity program, the Mobile Cash program involved the sale of equipment together with service
8 contracts, for the purpose of generating a profit for investors. The equipment sold by Mobile Cash was
9 wireless terminal machines ("WTMs"), marketed by the same promoters who had marketed the CTMs.

10 11. On April 17, 2000, three weeks after BERGH signed his proposed Order and Consent and
11 three days after the Commission entered its Order, BERGH sold an \$80,000 investment in WTM business
12 opportunities to an elderly, blind investor, who relied completely on BERGH for information concerning her
13 investment.

14 12. On April 19, 2000, the Commission served BERGH by certified mail a copy of the final
15 Order against him.

16 13. On April 27, 2000, BERGH testified in an examination under oath before the Securities
17 Division that he believed that the Mobile Cash WTM business opportunity investment program was a
18 continuation of the World Cash CTM business opportunity investment program, which the Commission, in its
19 Order against BERGH entered on April 14, 2000, had found to involve the sale of unregistered securities.

20 14. On or around April 5, 2000, an agent of NFG, Ray Nelson, sold a WTM business
21 opportunity to an Arizona investor. BERGH submitted the sale to Mobile Cash as new business transacted
22 by WWB. Mobile Cash paid the commission for the sale to BERGH on or around April 26, 2000, after the
23 Order was entered by the Commission on April 14, 2000. BERGH paid a share of his commission to
24 Nelson.

1 15. On or around May 3, 2000, Ray Nelson, acting as an agent for NFG, sold another WTM
2 business opportunity to another Arizona investor. BERGH submitted the sale to Mobile Cash as new
3 business transacted by WWB. Mobile Cash paid the commission for the sale to BERGH on or around June
4 28, 2000. BERGH paid a share of his commission to Nelson.

5 **B. Description of the Business Opportunity Investment Programs Sold by**
6 **BERGH: World Cash CTMs and Mobile Cash WTM.**

7 16. The equipment sold by World Cash was cash ticket machines (“CTMs”). Pursuant to the
8 service contracts promoted with the CTMs, the service companies would manage the equipment for the
9 purpose of generating a profit for investors. The offering documents for the CTM investment program and
10 WTM investment program describe the equipment as serving a similar function of allowing customers of retail
11 food outlets to use credit or debit cards to transact purchases. The primary difference is that the WTM are
12 wireless handheld machines, whereas the CTMs are stationary terminals similar to ATMs. CTMs are located
13 at the site of retail merchants and issue tickets to customers that can be used to purchase food. WTM are
14 placed with retail merchants in order to enable electronic purchase transactions at the customers’ points of
15 delivery. The services offered include locating and installing the equipment with retail merchants, handling or
16 processing the transactions, monitoring and maintaining the equipment, insuring the equipment, and issuing
17 monthly profit distribution checks to the investors or “business owners.”

18 17. The investor agreements for the CTM and WTM business opportunity programs are almost
19 identical, and include a Sales Agreement and a Services (sic) Agreement, offered as a package to all
20 investors. Although the Sales Agreements present options for selecting services from several companies,
21 World Cash Providers, Inc. was the recommended service company for the CTMs, and World Wireless
22 Solutions, Inc. dba Wireless Express USA, Inc. (“Wireless”) and World Electronic Payments Solutions, Inc.
23 (“WEPS”) were the recommended service companies for the WTM. Services Agreements for only World
24 Cash Providers, Inc. were included in the information packet BERGH provided to prospective CTM
25 investors. Services Agreements for only Wireless were included in the information packet BERGH provided
26 to prospective WTM investors. WEPS was the designated service company for transaction handling for all

1 Wireless clients. All Arizona investors selected World Cash Providers, Inc. to service the CTMs, and
2 Wireless and WEPS to service the WTM.

3 18. Although the offering documents for the CTM and WTM Programs describe options for
4 different levels of managing the equipment, in practice, all investors selected the full-service option, which
5 offers a revenue-sharing feature and a buy-back provision from the recommended service company. Under
6 the full-service option, investors have no responsibilities with respect to the operation of their equipment
7 beyond signing the service contracts, no financial obligations apart from the initial payment to purchase the
8 units, no continuing financial obligation in the operation of their equipment, and no liability for any expenses or
9 costs related to the operation of the equipment. At least one of the services offered to investors, i.e.,
10 transaction handling, requires special expertise. That function, purportedly handled by WEPS, involves
11 processing transactions, and is the key to generating a profit for investors.

12 19. BERGH sold the CTM and WTM business opportunities to unsophisticated investors,
13 including elderly and retired people, who had no experience in or knowledge of the cash terminal or wireless
14 terminal businesses, who never intended to take possession of, or to manage, the equipment, and who did not
15 even know where their equipment was located. Through written and oral statements, BERGH represented
16 that these were passive investments.

17 20. According to written materials and oral statements made to investors, investors in the CTM
18 and WTM Programs are supposed to receive a) minimum monthly revenue equivalent to 13% of their original
19 investment generated from the operation of their equipment; b) a share of the monthly net profit on each
20 machine in excess of the base monthly payment; c) a full return of their investment at the end of the five-year
21 term because they have a right to sell the equipment back to the service company for the original amount of
22 the investment, or renew the investment; and d) if the monthly revenue from the operation of the machine falls
23 below the base payment, the right to request that the service company repurchase the equipment for the
24 original sales price or relocate the equipment to another location with the potential for a higher profit from
25 sharing in increased revenue.

21. Under the CTM Equipment Sales Agreement, World Cash Providers, LLC represented to investors that the “Closing” of the transactions contemplated by the Equipment Sales Agreement, which included delivery of the CTMs and “Leased Site” assignments to the Purchaser or the Purchaser’s Agent, would occur within 30 days of the receipt of the completed contracts and collected funds. If for any reason such Closing did not occur, then the Purchaser’s payment was to be promptly returned to the Purchaser. World Cash Providers, Inc., who was agent for the investor pursuant to the Services Agreement, represented to investors that their monthly distribution payments would be based upon the equipment revenues collected by the service company. Many investors received monthly “revenue” distribution payments, although their equipment was never delivered or placed in service and generated no revenue. Those investors were never informed that their equipment was not delivered or placed in service, and their funds were not returned to them.

22. World Cash Providers, Inc. paid CTM investors monthly “revenue” distribution checks until around June 2000, when the payments stopped. Many CTM investors had received monthly revenue payments even though they were never notified of the location of their machines, and never received any accounting reflecting the actual revenue generated from the operation of their CTMs.

23. As of January 11, 2000, not a single WTM had been placed in service. Since April 2000, Wireless has paid and is continuing to pay WTM investors the promised base monthly payments although no revenue has been generated. The payments have been made from funds wire transferred to Wireless from Mobile Cash Systems, LLC (“Mobile Cash”), the company that sold the equipment to the investors. Investors were not informed that their monthly “profit” distributions were not generated from the operation of their machines, or that their machines were not yet in operation.

C. Sales and Marketing Network for the “Business Opportunities.”

24. BERGH recruited sales agents from Arizona to promote and to sell the CTM and WTM business opportunity investment programs as agents of NFG (“NFG Agents”).

30. From in or around March 2000, BERGH offered and sold securities in the form of investment contracts within or from Arizona.

31. The securities referred to above were not registered pursuant to Articles 6 or 7 of the Securities Act.

32. This conduct violates A.R.S. § 44-1841.

V.

VIOLATION OF A.R.S. § 44-1842

(Transactions by Unregistered Dealers or Salesmen)

33. From on or about April 14, 2000, BERGH offered or sold securities within or from Arizona while not registered as a dealer or salesman pursuant to Article 9 of the Securities Act.

34. This conduct violates A.R.S. § 44-1842.

VI.

VIOLATION OF A.R.S. § 44-1991

(Fraud in Connection with the Offer or Sale of Securities)

35. From around January 1999 through around May 2000, in connection with the offer or sale of securities within or from Arizona, BERGH directly or indirectly: (i) employed a device, scheme or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts which were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; or (iii) engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon offerees and investors. BERGH's conduct includes, but is not limited to, the following:

a) BERGH misrepresented the safety of the CTM and WTM investments and failed to disclose risks, including the potential loss of investment funds.

b) BERGH misrepresented to CTM investors that their equipment would be delivered within 30 days of their completed contract. BERGH failed to disclose that many of the CTMs that were purchased were never delivered or placed in service.

1 c) BERGH represented that CTM investors were to receive monthly distributions from the
2 revenue generated from the operation of their CTMs. In fact, however, monthly distributions were
3 being paid to many investors for CTMs that were never placed in service for them.

4 d) BERGH represented that investors were to receive monthly distributions from the revenue
5 generated from the operation of their WTM. In fact, however, from April through December 2000,
6 WIRELESS distributed monthly payments to investors although no equipment was placed in service for
7 any investors.

8 e) BERGH failed to disclose to WTM investors that no WTMs had been placed in service,
9 and that no revenue had been generated from the operation of these units.

10 f) BERGH failed to disclose to WTM investors that Wireless and WEPS, the service
11 companies that were supposed to manage the equipment to generate revenue for the distributions, had
12 not even begun service operations.

13 g) BERGH failed to disclose to investors that he was receiving sales commissions in the
14 amount of 13-15% of investors' funds for the sale of the CTMs, and 17% for the sale of the WTMs.

15 h) BERGH failed to disclose any financial or background information about World Cash,
16 Mobile Cash, Wireless, or WEPS, or their principals.

17 i) In particular, BERGH failed to disclose to investors who invested subsequent to the
18 following events:

19 (1) That on February 8, 2000, the California DOC issued orders against World Cash to
20 desist and refrain from the unlawful sale of securities involving the World Cash CTM
21 business opportunities.

22 (2) That on March 24, 2000, BERGH signed a proposed Order and Consent, negotiated
23 by BERGH with the Division, in which BERGH agreed to cease and desist from the
24 offer or sale of unregistered securities and to pay penalties for the sale of securities,
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1 including investment contracts involving World Cash CTMs, membership interests in
2 Hotel Connect LLCs, and pay telephones.

3 (3) That on April 14, 2000, the Commission entered the Order finding the business
4 opportunities involving CMTs were unregistered securities, and ordering BERGH to
5 Cease and Desist from the sale of unregistered securities, to pay penalties, and
6 revoking BERGH's securities salesman's registration.

7 36. This conduct violates A.R.S. § 44-1991.

8 37. As a separate and additional basis for liability under A.R.S. § 44-1991, during the above
9 violations of A.R.S. § 44-1991, BERGH directly or indirectly controlled NFG Agents, including Ray Nelson,
10 within the meaning of A.R.S. § 44-1999. Therefore, BERGH is liable to the same extent as NFG Agents,
11 including Nelson, for any of the above-stated violations of A.R.S. § 44-1991.

12 38. As a separate and additional basis for liability under A.R.S. § 44-1991, BERGH participated
13 in or induced the sale or purchase of a security within the meaning of A.R.S. § 44-2003(A). Therefore,
14 BERGH is liable for the above violations of A.R.S. § 44-1991.

15 VII.

16 REQUESTED RELIEF

17 The Division requests that the Commission grant the following relief against BERGH:

- 18 1. Order BERGH to permanently cease and desist from violating the Securities Act, pursuant to
19 A.R.S. § 44-2032;
- 20 2. Order BERGH to take affirmative action to correct the conditions resulting from his acts,
21 practices or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032;
- 22 3. Order BERGH to pay the state of Arizona administrative penalties of up to five thousand
23 dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036; and
- 24 4. Order any other relief that the Commission deems appropriate.

25 VIII.

HEARING OPPORTUNITY

RESPONDENTS may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306. A request must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. Each RESPONDENT or his attorney must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. A Docket Control cover sheet must accompany the request. A cover sheet form and instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at www.cc.state.az.us/utility/forms/index.htm.

If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission may, without a hearing, enter an order against each RESPONDENT granting the relief requested by the Division in this Notice of Opportunity for Hearing.

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Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Shelly M. Hood, ADA Coordinator, voice phone number 602/542-3931, e-mail shood@cc.state.az.us. Requests should be made as early as possible to allow time to arrange the accommodation.

Dated this _____ day of January, 2001.

Victor Rodarte
Assistant Director of Securities

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